

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN SEATTLE

ANGELO DENNINGS, et al.,)
Plaintiffs,) No. C10-1859JLR
v.)
CLEARWIRE CORPORATION,)
Defendant.)

SHOW CAUSE HEARING

August 20, 2013

BEFORE THE HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs: Clifford Cantor
LAW OFFICE OF CLIFFORD CANTOR
Felix Luna
PETERSON WAMPOLD ROSATO LUNA
KNOPP

For the Defendant: **Steve Rummage**
DAVIS WRIGHT TREMAINE

For Mr. Bandas: Michael Iaria
Susan Wilk
Donald Heyrich
LAW OFFICE OF MICHAEL IARIA

1 THE COURT: The clerk will call this matter.

2 THE CLERK: Case C10-1859, Angelo Dennings versus
3 Clearwire Corporation. Counsel, please make your
4 appearances for the record.

5 MR. CANTOR: Good afternoon, your Honor. Cliff
6 Cantor for the plaintiffs.

7 MR. LUNA: Good afternoon, your Honor. Felix Luna
8 for the plaintiff.

9 MR. RUMMAGE: Steve Rummage, your Honor, for the
10 defendants.

11 MR. IARIA: Mike Iaria for Mr. Bandas personally.
12 Also present is Susan Wilk.

13 MS. WILK: Good afternoon.

14 MR. BANDAS: Your Honor, Chris Bandas for
15 objectors.

16 MR. HEYRICH: Donald Heyrich. Good afternoon.

17 THE COURT: Counsel, we are here for further
18 hearing in regards to the question which the court had
19 raised in regards to what is the appropriate sanction, if
20 any, in regards to the failure to comply with the orders
21 of this court.

22 In connection with that, I can tell you that I have
23 reviewed the memorandum submitted by Mr. Bandas, and
24 attached to that the exhibits, which include the
25 declaration from Mr. Talmadge, the declaration from

1 Mr. Kagan, the declaration of -- I assume it is probably a
2 she -- Jan Petrus, and, finally, the declaration of
3 Mr. Bandas, which contains a number of additional
4 attachments, and then some cases cited for the benefit of
5 the court, including the Navistar Diesel Engine Products
6 Liability Litigation, and a copy of a pleading filed in
7 this matter, only in the Ninth Circuit.

8 In addition to that, I have had the opportunity to
9 conduct some extensive research into the defendant's --
10 excuse me, Mr. Bandas' principal objection to any form of
11 sanctions, which is the question of bad faith. I think
12 that I, at this point, am quite up to speed on what
13 appropriately should be done here.

14 So, Mr. Iaria, do you wish to present any other
15 evidence before I hear argument?

16 MR. IARIA: I am not prepared to present
17 additional evidence at this hearing. I was under the
18 impression that evidence would be limited to a written
19 submission that was due last week. That's what we have
20 done.

21 THE COURT: Is this intentional that you set a
22 date, you move the date, and now you tell me that you are
23 not going to present evidence? You, sir, are the one who
24 raised the question last time of we are going to be denied
25 our constitutional due process if I'm not permitted to

1 present evidence.

2 MR. IARIA: I apologize, your Honor. I believe
3 the court indicated that we had the right to do it at the
4 first part of the hearing, and then subsequent to that
5 there would be written submissions. That's what we
6 focused on doing.

7 THE COURT: Then I am cancelling today's hearing.
8 I am going to set a new date. I will set it at the
9 convenience of the court. If you want to call witnesses,
10 you can call witnesses. But, frankly, I consider this to
11 be game playing --

12 MR. IARIA: Your Honor --

13 THE COURT: And I don't understand why you are
14 doing this. But that's your decision.

15 The clerk will issue a new hearing date. I expect it
16 to be held promptly, and I will take action at that time.
17 If you're going to call witnesses, you need to have them
18 here, in addition to the written material that you have
19 submitted.

20 MR. IARIA: Your Honor, may I address the court,
21 please?

22 THE COURT: Yes, please do.

23 MR. IARIA: I have had the opportunity to discuss
24 with my client on what the preferred method of proceeding
25 is. I am not playing games. That was my understanding of

1 what the court's order was, that this part of the
2 proceeding we were limited to submitting written
3 submissions, and that's what we did, your Honor. I am not
4 playing games, your Honor. I understand the court. I
5 understand your position. I don't do that. And I'm not
6 doing this in this manner. I just don't do that.

7 THE COURT: It is your turn to talk. Go ahead.

8 MR. IARIA: I'm done. I have expressed --

9 THE COURT: Did you contact the court and say you
10 wanted to present live evidence at any time?

11 MR. IARIA: The motion to continue indicated the
12 due process rights to present evidence, and the court
13 responded -- it is my interpretation of the court's
14 response, in its response to our motion to continue, and
15 the last portion of this hearing, this continued portion
16 of the hearing would be limited to a submission in
17 writing.

18 THE COURT: All right. It is your client's
19 jeopardy, counsel. I don't know why you are playing fast
20 and loose with the rules, because it is his reputation and
21 it is his ability to practice. But we brought him up here
22 so that we would get a final resolution of this on the
23 schedule that you urged, after you said you couldn't
24 possibly have it done, and then you shortened your own
25 schedule. Now you are telling me it needs to be extended

1 to some date in the future because you are not prepared to
2 call live witnesses. If you wish to consult with your
3 client, go ahead and consult with your client.

4 MR. IARIA: I didn't think the court wanted to
5 hear live witnesses at this hearing, and was limiting it
6 to written submissions. I am telling you that as honestly
7 and directly as I can. I do not play games with things
8 like that. I just don't. I am not going to play games
9 with your Honor. I wouldn't play games of any sort with
10 the court in a matter like this. I wouldn't take his
11 reputation in my hands like that and cast it aside
12 lightly. I am just not playing games. I don't know what
13 else to say.

14 THE COURT: Well, if you wished to call witnesses,
15 telling me that you somehow thought you were foreclosed, I
16 would have anticipated, before we brought your client up
17 here again, that you would indicate that you want to call
18 live witnesses, and that this date wasn't convenient for
19 them, or you didn't have time to arrange them, whatever
20 reason. I haven't heard any of that. What I have heard
21 was, we will submit materials, which came in. Now,
22 frankly, I am shocked to come out here and be told, "I'm
23 not prepared to proceed with this hearing."

24 MR. IARIA: May I have a second, your Honor?

25 THE COURT: Please don't tell me to hold on a

1 second. I think I am in control of this courtroom,
2 counsel. Now, if you want to talk to your client or you
3 want to get notes from counsel, that's fine.

4 MS. WILK: May I approach, your Honor?

5 THE COURT: Yes, you can.

6 MR. IARIA: Your Honor, we are prepared to go
7 forward today on the basis of the written submissions.

8 THE COURT: I'm not prepared to accept that. I am
9 not going to have you going up to the Court of Appeals
10 saying, "I was denied the opportunity to present a full
11 and fair defense." Therefore, I am going to adjourn this
12 hearing. I am going to set a new date. You can call your
13 live witnesses at that time. But I am not going to leave
14 you that very substantial opening to drive through and
15 say, the court was unfair to me. That's where we are.

16 Let me make it clear. I can't control what Mr. Bandas
17 does anywhere except in the Western District of
18 Washington. He is admitted under a process by the clerk's
19 office, where there is absolutely no review, other than
20 him filling out some document that says I am in good
21 standing and I have not been disciplined.

22 We are here, in part, because if I find that there has
23 been a willful disregard of an order of this court, one of
24 the remedies that is available to me is to cancel that
25 ad hoc admission to practice. That's a serious matter

1 only to the extent that it appears on your disciplinary
2 record. I don't want to do that on less than a full
3 record. If you think you need live witnesses, then we are
4 going to have live witnesses.

5 I will order up the transcript. If I said, "no live
6 witnesses" last time, then I will apologize. But I
7 thought that we had a clear understanding that we were
8 setting this hearing so you have a full and fair
9 opportunity to confront the questions that the court has
10 and proceed to make the record you want to make.

11 You have submitted two inches' worth of briefing, and
12 I appreciate that. I found it very interesting. I don't
13 think you are right on the law, but I will tell you that
14 it is a fairly murky area on the question of intent. I
15 was looking forward to argument. If you want to call
16 witnesses, great, you can call witnesses. Everyone else
17 can sit down, because there is only one person that speaks
18 at a time.

19 MR. IARIA: With the court's permission, may I at
20 least discuss directly with Mr. Bandas whether he is
21 prepared to go forward on the basis of the written
22 submissions alone today, rather than resetting?

23 THE COURT: Counsel, however, that doesn't prevent
24 you from then saying, we wanted to call witnesses; we were
25 placed in this position; the court maneuvered into it.

1 Frankly, that is what I am trying to avoid. I will give
2 you that full and fair opportunity.

3 MR. IARIA: It would address that if we say it
4 does on the record. It is one of those things I would
5 prefer to talk to my client directly about for a minute or
6 two and tell the court what our position is. The court
7 can have certainty about the record if we are going to
8 proceed today.

9 THE COURT: When you go up to the Ninth Circuit
10 and you say, "We didn't know we were able to call
11 witnesses," and "the court wanted to proceed with the
12 hearing," and so "we were maneuvered into the position of
13 being denied that opportunity even though we consented to
14 it," that's what I am concerned about. But, please, talk
15 to your client.

16 MR. IARIA: Thank you.

17 (At this time a short pause in the proceedings.)

18 MR. IARIA: I have discussed the specific issue
19 the court has raised with Mr. Bandas. He is prepared to
20 go forward today on the basis of the written submissions.
21 He is willing to waive any argument on appeal that deals
22 with the inability, for want of a better term, or the
23 failure to present live testimony here today. We
24 understand completely that the court has given us the
25 opportunity to come back another time and present live

1 testimony. Mr. Bandas would engage in a colloquy with the
2 court, to the extent the court wants to satisfy itself
3 that this waiver is knowing and voluntary, and complies
4 with all aspects of due process. I would point out that
5 there are waivers of this type entered all the time in
6 many different cases and witnesses.

7 Again, I can't say enough that I did not do this as a
8 machination or a way to create an issue. We are not
9 trying to create one now. If the court wants to talk to
10 Mr. Bandas, I would like the court to do that.

11 THE COURT: Counsel, I will engage with you
12 because you are counsel of record. Please proceed with
13 your argument.

14 MR. IARIA: May it please the court, I have
15 concerns today, and they are concerns based on the nature
16 of inherent sanctions and the authority that they give the
17 court.

18 As expressed in Hanshaw Enterprises, the court becomes
19 essentially an accuser, a fact-finder and a sentencing
20 judge. This obviously creates some troublesome potential,
21 as Hanshaw recognized. It can also lead to a lawyer
22 acting on behalf of a client, not being precisely sure who
23 he or she is talking to in a situation like this. Is it
24 the accuser, is it the fact-finder or is it the judge? I
25 would like to choose, at least at the outset, to engage

1 with your Honor as accuser, because that is part of the
2 process, and to segue later into discussing law and facts
3 with you as fact-finder and as judge.

4 Judge, again, I'm very worried that, as accuser, the
5 expressed ire here today at me personally, that this is
6 taking over a little bit. I don't mean to be
7 disrespectful to you as a judge; I just have a concern. I
8 apologize for what I have done here today. I am
9 optimistic and hopeful it doesn't lead to any adverse
10 inferences that the court might draw -- or that the court
11 as a fact-finder might draw later. But I am concerned,
12 because the court has previously expressed on the record
13 some degree of ire.

14 I am concerned also that there are some terms being
15 used here by class counsel, by the defense, and apparently
16 adopted by the court as part of the narrative that class
17 counsel got before the court first. One of the terms is
18 "professional objector." I am concerned that that could
19 be unfairly used as a pejorative substitute for evidence
20 and proof. Other district courts, with all due respect,
21 have concluded that representation by an attorney of
22 objectors has no greater bearing on the merits of the
23 objection raised than the plaintiff's counsel's experience
24 in filing class actions speaks to the merits of the claims
25 made in that context.

1 I am also concerned about some preliminary views of
2 the evidence, and whether they continue to obtain --
3 whether they continue to obtain, in the face of additional
4 evidence that we have submitted here in writing -- In
5 denying -- in the order denying the motion to vacate,
6 which is at Docket 156, at Page 4, note 1, there was a
7 negative comment in that footnote about Mr. Bandas'
8 argument that it took time to arrange for the transfer of
9 the full amount of the bond. The quote from the order is,
10 "Objector's decision to post \$2,000 in direct
11 contravention of the court's order belies this argument."

12 THE COURT: Mr. Iaria, let me help you and see if
13 we can simplify this. It was my experience in private
14 practice that when I needed to post bond, let's assume
15 that it was a \$10,000 bond, I went to a company that
16 issued bonds, and I didn't give them \$10,000, I paid a
17 fee, and they issued the bond. Now, I'm not sure what
18 that fee is these days, but the argument that it would
19 take me a long time to find \$41,000 is not one that
20 resonated with the court. That's what that footnote is
21 attempting to explain to counsel.

22 MR. IARIA: Well, I did discuss that with
23 Mr. Bandas, and he indicates that is not part of his
24 practice, not part of his procedure, and he was not aware
25 of bonding companies that would do that in this case, or

1 this type of case. He and Ms. Petrus, his bookkeeper, do
2 aver that she was on vacation for the period of time from
3 before the court's five-day order ran out, up until the
4 day the check was written to post the full amount of the
5 bond. When she came back, the check was written. She was
6 the one responsible for doing that in the office. It is
7 not a large firm, and they are not people who have
8 substitute responsibilities to take over in the absence of
9 somebody like Ms. Petrus.

10 THE COURT: Let's try and get a chronology so that
11 it is clear. What is the date of the order of this court
12 that says post a bond in the amount of \$41,000?

13 MR. IARIA: It was July 9th, I believe.

14 THE COURT: And what is the sequence in the order
15 that specifies a period of time?

16 MR. IARIA: Five days.

17 THE COURT: That means we need to get a bond by
18 July 13th.

19 MR. IARIA: Correct.

20 THE COURT: The argument that was made by
21 Mr. Bandas at the time was that he disagreed with the bond
22 amount that I set, and he had a good faith belief that I
23 was charging the wrong amount of damages in order to be
24 bonded against, and, therefore, he would tender a check
25 for \$2,000. Is that a correct recitation?

1 MR. IARIA: Yes.

2 THE COURT: Now, give me the timeframe for the
3 bookkeeper's vacation.

4 MR. IARIA: She was on vacation from July 13th
5 through July 21st.

6 THE COURT: So if we have five days from when I
7 issued my order --

8 MR. IARIA: Would be July 14th.

9 THE COURT: We have four of those five days the
10 bookkeeper is there, can write a check, apparently does
11 write a check at some point for \$2,000. And now I have
12 read Ms. Petrus' declaration that says, I was camping;
13 gosh, I wasn't bothered by my boss, and that's why this
14 whole problem was created. Do you subscribe to that
15 theory?

16 MR. IARIA: She doesn't say that's why this whole
17 problem was created. She says she was unavailable to
18 write the check.

19 THE COURT: She was available for four days,
20 wasn't she?

21 MR. IARIA: She was. And during that time period
22 there was still motions pending dealing with vacating the
23 court's order. There was still a motion in the Ninth
24 Circuit, an emergency motion for a stay, that hadn't been
25 decided. Mr. Bandas, as he points out in his declaration,

1 was waiting to see what happened on that. And, yes, a
2 check could have been written, but as the court knows from
3 its review of the case law that deals with the inherent
4 sanction authority of the court, the court has to find by
5 clear and convincing evidence that this was an act of bad
6 faith. And I don't believe it does that.

7 THE COURT: You keep switching to that gear every
8 chance you get. Let's stay on my question, which is, what
9 I have is a clear order of this court that says post a
10 bond in a certain amount. Do you believe that taking an
11 appeal to the Ninth Circuit suspends my order?

12 MR. IARIA: It doesn't suspend it, your Honor.

13 THE COURT: We are all here in beautiful Puget
14 Sound. The boat is here. I order the boat is free to
15 leave. No bond is posted and the ship sails. In the
16 meantime people say, well, you know -- All right. Let's
17 reverse my assumption here. Let's say I order it
18 detained. The presence of an appeal to the circuit
19 doesn't suspend the effectiveness of my order. That's a
20 principle that seemingly is never acknowledged here.
21 Rather, it is, you should examine my good faith in
22 thinking that you've got cloudy judgment and you've got
23 the wrong number. That, to me, is where we are. And all
24 the discussion of good faith in the world or bad faith in
25 the world, you know, you don't need bad faith when you

1 have a willful disobedience of a court order. The fact
2 that I need to inherently supervise the jurisdiction of
3 this court, I can't tolerate people going: Judge, I just
4 disagree with you, so I'm not going to do it. Which is
5 where Mr. Bandas and I were.

6 MR. IARIA: I don't believe he said, I disagree
7 with you; I am not going to do it. I believe, and he has
8 sworn in his declaration, that he had the intent to do it.
9 The five days was difficult.

10 The court may be coming at this from a different law
11 firm perspective from its past than Mr. Bandas' practice
12 currently. It was not an easy thing to come up with that
13 amount of money. He is in a -- His business situation in
14 that law firm is vastly different than, for example, a
15 large firm where there are many, many staff, many
16 employees who can handle things like this.

17 Again, you're right, the full bond amount was not
18 posted. That violates the court's order. The question
19 is, what sort of sanctions? Does that establish bad faith
20 so that the court can sanction under its inherent
21 authority, or is some other type of sanction, remedial in
22 nature, appropriate?

23 THE COURT: I must say, you cite one case for this
24 proposition, and that's the -- one lead case for this
25 proposition, and that's the Fink versus Gomez case,

1 decided by, I believe it was, Judge McKeown in 2001. In
2 it, on page -- I can't cite by headnotes anymore. The
3 cite for that is 239 F.3d 989. Under the analysis section
4 it says, "The Supreme Court in *Roadway Express versus*
5 *Piper* delivered the definitive summary of the basis on
6 which a federal court may levy sanctions under its
7 inherent power." "The court," referring to the district
8 court, "reiterated the federal court's inherent power to
9 levy sanctions, including attorney's fees for," quote,
10 "willful disobedience of a court order," followed by three
11 ellipses, "or, as an alternative, when the losing party
12 has acted in bad faith, vexatiously, wantonly, or for
13 oppressive reasons." Then it says a little bit later on
14 that, "The Supreme Court reaffirmed the *Roadway* principles
15 in *Chambers*," 501 U.S. 32, 1991.

16 Would you agree with me that the court sets out two
17 tests then for inherent authority, willful disobedience
18 being one and bad faith being the other?

19 MR. IARIA: I believe other cases discuss bad
20 faith in a different context. In that case, which I
21 believe also acknowledges that there is some confusion and
22 overlap of the use of the term "bad faith," it does say
23 that. But I believe there are good faith arguments to be
24 made that bad faith is required.

25 THE COURT: And I agree with you that there is an

1 extended discussion by Judge McKeown, who talks about the
2 Intel case, the Zambrano case, the Keegan case and the
3 Barber case. And when there is a discussion about the
4 Barber case, it is talking about the question of bad
5 faith. In talking about bad faith it has some language
6 which says that the contests between intentional -- Let
7 me start again. There is a difference between intentional
8 disregard of a court order and bad faith.

9 I don't know how we can have the Supreme Court saying
10 we've got two bases, one is willful disregard of an order,
11 and the second is bad faith; and the circuit then saying
12 bad faith is required for willful disobedience. So I
13 don't think I agree with your analysis of those cases,
14 although I certainly agree with you that the language in
15 these things is a hopeless muddle, as is frequently the
16 gift given us by the circuit.

17 MR. IARIA: And other courts as well, no question.
18 Your Honor, I do believe that an argument can be made that
19 bad faith is required, and even willfulness is a
20 heightened standard beyond mere neglect. There is no
21 question about that.

22 Let's assume for the sake of argument that willfulness
23 exists here, which I don't concede, but let's assume that
24 this was willful, in the sense of being defiant of the
25 court for no good reason, which is how I would like to

1 interpret it. We have a period of time here of just a few
2 days. What would the attorneys' fees be for failure to
3 post the full amount of the bond during that timeframe.

4 THE COURT: I don't intend to impose attorneys'
5 fees. I intend to impose, if I am persuaded, one, a
6 revocation of Mr. Bandas' pro hac vice status in the
7 Western District of Washington, something that you discuss
8 in your memorandum at length, saying, Judge, you don't
9 have any authority to go anywhere else. I agree that I
10 don't have any authority to tell -- Mr. Bandas, you are
11 in the Eastern District of Texas?

12 MR. BANDAS: Southern District of Texas, your
13 Honor.

14 THE COURT: I can't tell the Southern District of
15 Texas to punch Mr. Bandas' ticket. That is not my
16 authority. I do have the authority, and the supervision
17 of the lawyers who practice before me, to revoke a pro hac
18 vice status in the Western District of Washington.

19 The second thing that I have is an ability to
20 sanction. Sanctions are different than attorneys' fees,
21 although, once again, under those Ninth Circuit cases they
22 sometimes all get lumped together.

23 Addressing your last point, I don't need to go any
24 farther than Mr. Bandas's memorandum in opposition to
25 sanctions -- I'm going to look, but it is signed by you,

1 where it says, "The full bond amount was not timely
2 posted." And Mr. Bandas agrees that this violated the
3 court's order. So I think we have established that we
4 have a violation of the court order.

5 Consequently, I am not sure -- I mean, there are a
6 lot of papers talking about bad faith. I'm not sure what
7 that really is all about. You also have some footnotes in
8 there about criminal contempt that I am still waiting to
9 understand the relevance of. I am not here on criminal
10 contempt. I am here under my inherent power to supervise
11 the jurisdiction before me. I have a straight act of
12 disobedience of a court order, for which I am now
13 presented with a couple of explanations, one of which was:
14 Well, Judge, you were wrong, and so we didn't do it; and,
15 my bookkeeper was on vacation, and so I didn't do it. All
16 I know is, in what seemed to me to be a pretty clear case,
17 that was the result of several weeks' worth of to-ing and
18 fro-ing between class counsel and defense counsel and the
19 objector's counsel, an order of this court issued saying
20 post this amount. And it didn't happen. Why is this more
21 complex than that?

22 MR. IARIA: First of all, if the court is saying
23 in its comments about criminal contempt that it is not
24 interested in or will not impose punitive sanctions, such
25 as a punitive fine unrelated to compensatory or remedial

1 costs, then we don't need to get into that farther.

2 I do believe in good faith that it is the nature of
3 the sanctions that determines the process that is due.
4 There is a separate and different process that is due
5 under the rules for punitive sanctions. Calling them
6 sanctions doesn't change the nature of whether it is
7 punishment or not. If we are not going there, then we
8 don't need to resolve that good faith difference that we
9 have here.

10 THE COURT: Then let's get you on the record. If
11 I am looking at revoking pro hac vice status, is that a
12 punitive sanction?

13 MR. IARIA: I believe it could be. I believe an
14 argument could be made to that extent.

15 THE COURT: Would you like to make it now?

16 MR. IARIA: It doesn't seem to have any remedial
17 purpose, and it is not compensatory, so that leaves
18 punitive.

19 THE COURT: All right. Is it your position then
20 that would require a finding of bad faith?

21 MR. IARIA: Yes.

22 THE COURT: So your position is that a flat-out
23 disobedience of a court order is not grounds for removing a
24 pro hac vice admission?

25 MR. IARIA: Your Honor, first of all, I don't

1 believe there was a flat-out disobedience of the court's
2 order.

3 THE COURT: Help me with that one. Did it happen
4 or did it not?

5 MR. IARIA: It happened. But there was a
6 procedure that Mr. Bandas followed that he believed in
7 good faith allowed him to do this. There was a dispute,
8 obviously, about the nature of the administration costs
9 and whether they concluded in a Rule 7 bond. In the
10 Navistar Diesel case another district court judge has
11 agreed with that position, that they shouldn't be included
12 in the Rule 7 bond. At some point you get to a bond that
13 is so high that it actually deprives a litigant of a right
14 to appeal. This is not a small bond that was imposed. It
15 was imposed, it was required to be posted in a very quick
16 way, and Mr. Bandas did everything that he could to
17 challenge it, and had the intent to post it, and
18 ultimately did post it. I don't consider that to be a
19 willful flouting of the court's authority. I believe it
20 was a good faith challenge to what the court had ordered.

21 THE COURT: Do you think that is how this system
22 operates, that Mr. Bandas or you can say, Judge, we just
23 don't agree with your order and so we are not going to
24 obey it? You want \$41,000, we think the proper amount is
25 \$3,000, so we are going to send you a check for \$3,000.

1 By the way, we are going to appeal it to the circuit, and
2 so in the meantime, get over it. Is that your concept of
3 the judicial system?

4 MR. IARIA: It is not, your Honor. I don't
5 believe that is what Mr. Bandas said or implied or
6 intended in any of his actions. I believe, again, that he
7 challenged the order in good faith and did everything he
8 could in aggressive litigation to get it overturned, and
9 had the intent to pay it upon getting decisions, at least
10 at this stage of the proceedings -- not that he was wrong,
11 but he wasn't going to be listened to at this stage of the
12 proceedings. The Ninth Circuit and the court turned down
13 his motion to stay. I believe that was good, aggressive
14 litigation, and he pushed it as far as he could.

15 Where he failed was in not having the full amount
16 ready to go. I ask myself, is that a sanction that -- is
17 that a violation of a court order that requires a fairly
18 dramatic sanction, you can't practice here anymore pro hac
19 vice? That's --

20 THE COURT: Well, do you think -- I'm sorry. I
21 cut you off again.

22 MR. IARIA: I think that is a fairly substantial
23 sanction that is not warranted by the facts, even as the
24 court interprets them.

25 THE COURT: So your view is that it is okay for

1 lawyers that practice in the Western District of
2 Washington to not follow direct orders of the court
3 because they disagree with them and say, I'm not posting a
4 bond because I disagree with the terms of your order, but
5 I am appealing to the circuit, and so that's okay?

6 This seems to me the fundamental point of difference
7 for us. I was trained in the belief that when the court
8 made an order, it actually had to be obeyed.

9 MR. IARIA: It does. The court has the authority,
10 and the court issued and entered an order, and it does
11 have to be obeyed. That is not the end of the inquiry, in
12 terms of whether there was bad faith and we are going to
13 get into inherent power sanctions; and, two, what is a
14 sanction commensurate with the misdeed.

15 THE COURT: All right. Let's have you finish up
16 your argument here. You should tell me what you want me
17 to know, because I have asked my questions.

18 MR. IARIA: The court sits ultimately as
19 fact-finder and sentencing judge in this context. It is
20 clear from the questions that the court is taking a
21 preliminary view of things that is different on some of
22 the inferences to be drawn from the evidence. Again, I
23 continue to be concerned about some inferences that the
24 court may be drawing or basing things on. I have
25 discussed some of them at the outset.

1 There is a comment that the court made on the record
2 the last time about the objectors and their relationship
3 with Mr. Bandas, the professional attorney-client
4 relationship.

5 THE COURT: And I found your submissions on that
6 interesting. I, frankly -- Mr. Bandas apparently has an
7 agreement with these people that they substituted his
8 judgment for their judgment, which is an interesting
9 approach to the attorney-client relationship. That's when
10 your three adversaries sitting there, all I'm sure
11 enjoying this process, asked these people, "Did you read
12 this?" And they say, "No." "Well, do you agree with it?"
13 "Well, I don't know." "Did you consult with your lawyer
14 about it?" "No." That's the record that comes back to
15 me. That doesn't sound -- I understand the attorney is
16 going to be better informed; he is going to have a broader
17 understanding of the law, but I think there is some need
18 to consult with your client to say, "This is what I
19 recommend. Do you agree? Am I authorized? That
20 apparently, if I take your briefing on this subject, was
21 initiated by Mr. Bandas' agreement. I think that is
22 interesting, but I don't think it has anything to do with
23 what we are talking about.

24 MR. IARIA: I can leave it behind as one of those
25 interesting things we discussed, and that is not relevant

1 I am assuming, to the court's decision, ultimately?

2 THE COURT: I have told you what is relevant. It
3 is a very simple set of a facts. It is the fact that I
4 order something, it doesn't happen.

5 It is almost sort of a partial compliance, but it is a
6 substitution of somebody else's judgment for my order.
7 And that, to me, is not going to be able to be tolerated
8 in the context of trying to administer large class actions
9 or the smallest dog bite case that comes in here.

10 When the court speaks, the remedy if you don't like
11 what I say is to have the people who grade my homework
12 tell me I'm wrong, which sometimes they do and sometimes
13 they don't. In the meantime, you don't suspend the
14 operation of the order because you disagree with it.

15 MR. IARIA: Again, I can point to the Azizian
16 case. I know we have an agreement to disagree about our
17 interpretation of that and what it means. I believe that
18 it does set forth some steps. It is not necessarily a
19 holding that I am suggesting Azizian stands for. But
20 there was a particular result in that case that is
21 consistent with Mr. Bandas's use of that case, and his
22 hope for what the outcome of the court's bond would be.
23 In Azizian, the sanction was the dismissal of the appeal.
24 The Ninth Circuit decided that was too severe a price to
25 pay, given the steps that the litigant had followed in

1 that case, which were precisely what Mr. Bandas followed
2 in this case. It negates bad faith, I believe it negates
3 willfulness as well, and certainly mitigates any sanction
4 that the court would be interested in imposing.

5 THE COURT: How could it eliminate willfulness? I
6 mean, "willfulness" in this context is compliance with the
7 order/noncompliance with the order.

8 MR. IARIA: I guess I view willfulness differently
9 than that, that it is a flouting of the court's authority
10 for other purposes.

11 THE COURT: That, to me, would start to get into
12 the Ninth Circuit's distinctions between negligence,
13 recklessness and intentional conduct. And by "intentional
14 conduct," I mean what you use as bad faith, evil motive in
15 the heart. None of that, to me, has anything to do with
16 the question of did I intend to pay this, but, you know,
17 my secretary got in an accident on the way to the post
18 office and the check didn't get sent. That wouldn't be
19 willfulness to me. When you have made the decision, and
20 in fact confirmed by the fact that you send the check for
21 \$2,000 because you think that looks better than 41, that's
22 willfulness to me, counsel.

23 MR. IARIA: I came in here today not prepared to
24 present evidence because of the way I read the court's
25 order. I did not come in here to pull the wool over the

1 court's eyes with that. I hate to think that if I were
2 appearing pro hac vice I could be barred from forever
3 practicing in this district for my mistake here today. I
4 violated the court's order, the way the court is
5 describing Mr. Bandas's disobedience of the court's order.
6 The court got pretty angry with me and accused me of
7 things that I am telling you, again, I did not do. I
8 really hate to think that I could be barred from
9 practicing before the court for what I did.

10 It seems to me, under the court's interpretation of
11 its authority, that there is no order that could not be
12 violated without being subject to what I think is a fairly
13 Draconian sanction, a professional stain of not being able
14 to practice in a particular district. I respectfully
15 disagree with what the court is proposing as a sanction.
16 Thank you.

17 THE COURT: All right. We have spent 50 minutes
18 discussing this matter. Mr. Bandas, I am going to do
19 something unusual, because you are represented by counsel.
20 But it is you that ultimately is the subject of this. Do
21 you have anything you wish to add, sir?

22 MR. BANDAS: Simply, your Honor, I am embarrassed
23 that it has come to this. My apologies to the court for
24 what I think the court has perceived as intentional
25 disrespect. I did not intend that, your Honor.

1 THE COURT: I don't consider it intentional
2 disrespect, I consider it intentional noncompliance. You
3 are sitting where a lot of defendants sit in this
4 courtroom. Disrespect is something that periodically they
5 manifest in hand gestures or an analysis of the state of
6 my parent's marriage when I was conceived. You and I
7 simply don't agree on the fact -- I mean, you're welcome
8 to challenge the bond amount. That is something that is
9 totally fine. But there is a way to do that. In my view,
10 you didn't do it. That's what our disagreement is.

11 MR. BANDAS: I understand, your Honor. I am
12 feeling the energy of the defendants here.

13 THE COURT: That's bad, because I think we had a
14 child pornographer and I think we had bank robbers this
15 week. You are several classes up from that.

16 MR. BANDAS: Thank you, your Honor. I will sit
17 down and be quiet.

18 THE COURT: I think the facts in this matter are
19 clearly stated. The court entered an order, it wasn't
20 complied with. It was not complied with, and instead a
21 lesser amount was sent. Simultaneously, there was an
22 effort to seek some form of appellate review.

23 To the court, the rules are clear, that you can't
24 substitute your judgment, regardless of the extent of your
25 good faith, for a direct order of the court. I find that

1 conduct to be clear and convincing evidence. I do so
2 because there is really no disagreement about it.
3 Mr. Iaria, in his briefing, concedes the full bond amount
4 was not timely posted, and Mr. Bandas agrees that this
5 violated the court's order.

6 The larger context of this has to do with a
7 substitution of a party's belief as to the appropriate way
8 to proceed for that of the court. Contrary to the
9 briefing submitted and the declarations submitted, I don't
10 think they are persuasive in this case, because they all
11 focus on the belief that there has to be bad faith shown
12 in connection with a willful disobedience of a court
13 order.

14 I am in sympathy with the fact that Mr. Iaria has to
15 battle the court, the other party in this particular
16 motion. I also am feeling somewhat hamstrung, in that I
17 can't argue equally because of my role as both the
18 fact-finder and the ultimate decision-maker. But I
19 believe that the proper interpretation of the law is that
20 the court can sanction if a party acts in bad faith,
21 vexatiously, wantonly, or for oppressive reasons; or, the
22 second test, that the party willfully disobeys a court
23 order. I disagree with Mr. Iaria that that is available
24 in every case. I think there is a rule of reason. If I
25 could get rid of every lawyer who violated one of the

1 local rules, usually on filing, there would be very few
2 lawyers left.

3 But the decisions that I would look to would include
4 the Aloe Vera decision, 376 F.3d Ninth Circuit 2004, and
5 the much discussed Fink versus Gomez case, where I think
6 the court falls into the trap of using the two words "bad
7 faith" in at least two or three different meanings.

8 As I have indicated, I do find, under a clear and
9 convincing evidence standard, there was disobedience with
10 the court's order.

11 I have attempted to be mindful of the opportunity to
12 provide Mr. Bandas with a full opportunity to respond, one
13 that he more than amply took advantage of. I think that I
14 understand the full record, and I understand the point of
15 view that is found in my understanding of the court's
16 inherent authority to enforce the rules of the Western
17 District of Washington, and, simply, the court's inherent
18 authority to supervise the litigation that is before it.

19 The question then, having made that finding, is, what
20 is the sanction that is appropriate? In this instance, I
21 believe that the sanction is to at this time revoke
22 Mr. Bandas' authorization to practice in the Western
23 District of Washington. That's, frankly, without a lot of
24 significance, as this case is largely over.

25 As I have attempted to say now on two or three

1 occasions, so that there was no misunderstanding, I can't
2 tell any other district or any other circuit, or any
3 circuit, what it should do. But I do find that conduct in
4 relation to a case here requires that remedial action.

5 I have thought long and hard about the question of if
6 I want to impose financial sanctions. My conclusion is
7 that Mr. Bandas has been forced to give up portions of his
8 time in order to come to Seattle and participate in these
9 proceedings, and has also incurred the expense of hiring
10 counsel, and paying expenses for his own trips up here.
11 Given that situation, I don't believe that a further
12 monetary sanction is necessary or appropriate.

13 Therefore, the ruling of this court is that, in
14 regards to the appropriate sanction, it will be to revoke
15 Mr. Bandas' permission to practice pro hac vice in the
16 Western District of Washington.

17 I believe that there are two motions pending. One is
18 the request to withdraw as local counsel, which I will
19 grant. I believe there is also one other motion that has
20 to do with participation as counsel. I didn't bring my
21 motion report out here, but when the minutes come out, I
22 will clean up any remaining housekeeping matters.

23 Mr. Iaria, anything further on behalf of Mr. Bandas.

24 MR. IARIA: No, your Honor.

25 THE COURT: Can you think of any other pending

1 motions? Mr. Bandas?

2 MR. BANDAS: No, your Honor.

3 THE COURT: Do any of the plaintiff class or
4 defense counsel have anything further, in terms of
5 procedural matters in this proceeding?

6 MR. CANTOR: No, your Honor.

7 MR. LUNA: No, your Honor.

8 MR. RUMMAGE: No, your Honor.

9 THE COURT: I think we have wrapped this one up,
10 and court will be in recess.

11 (Adjourned.)

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CERTIFICATE

I, Barry L. Fanning, Official Court Reporter, do hereby certify that the foregoing transcript is true and correct.

S/Barry L. Fanning

Barry L. Fanning